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BEFORE THE BOARD OF OIL, GAS AND MINING

DEPARTMENT OF NATURAL RESOURCES

IN AND FOR THE STATE OF UTAH

IN THE MATTER OF THE REQUEST FOR AGENCY
ACTION OF UTAH DIVISION OF OIL, GAS AND
MINING FOR AN ORDER TERMINATING NOTICE OF
INTENTION OF TONY AGUIAR D/B/A DIVERSIFIED
STONE PRODUCTS, INC.; REQUIRING IMMEDIATE
RECLAMATION; AND AUTHORIZING THE DIVISION
TO FILE SUIT TO RECOVER THE COSTS OF RECLAMATION
OF THE WONDER 2 MINE S410025, W 1/2, NE QUARTER,
SECTION 23, TOWNSHIP 26 SOUTH, RANGE 4 WEST,
SLB&M, SEVIER COUNTY, UTAH.

DOCKET NO. 2009-017 CAUSE NO. S410025

TAKEN AT: Department of Natural Resources
1594 West North Temple, Room 1040
Salt Lake City, Utah

DATE: Wednesday, December 9, 2009

TIME: 9:36 a.m. to 11:21 a.m.

REPORTED BY: Michelle Mallonee, RPR

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APPEARANCES

BOARD OF OIL, GAS AND MINING:

Douglas E. Johnson, Chairman
James T. Jensen
Ruland J. Gill, Jr.
Jake Y. Harouny
Kelly Payne
Samuel C. Quigley (Excused)
Jean Semborski

DIVISION OF OIL, GAS AND MINING:

John R. Baza, Director
Dana Dean, Associate Director, Mining
Gil Hunt, Associate Director, Oil and Gas
Steve Schneider, Administrative Policy Coordinator
Julie Ann Carter, Secretary to the Board
Marianne Burbidge, Legal Secretary

ASSISTANT ATTORNEYS GENERAL:

Steven F. Alder - Division Attorney
Fred Donaldson - Division Attorney
Michael S. Johnson - Board Attorney
Stephen Schwendiman - Board Attorney
Megan Depaulis - Board Attorney

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I N D E X

WITNESS

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EXAMINATION

Direct Examination by Mr. MacDonald

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MICHAEL JACKSON

Testimony Given by Mr. Jackson

23

[4]

Docket No. 2009-017 Cause No. S410025

Wednesday, December 9, 2009

(The proceedings began at 9:35 a.m.)

CHAIRMAN JOHNSON: Agenda Item No. 3 is Docket No. 2009-017 Cause No. S410025 - In the Matter of the Request for Agency Action of Utah Division of Oil, Gas and Mining for an Order Terminating Notice of Intention of Tony Aguiar d/b/a Diversified Stone Products, Inc.; Requiring Immediate Reclamation; and Authorizing the Division to File Suit to Recover the Costs of Reclamation of the Wonder 2 Mine S410025, W 1/2, NE Quarter, Section 23, Township 26 South, Range 4 West, SLB&M, Sevier County, Utah.

Mr. McDonald -- Donaldson, excuse me. Fred, you are representing the State.

MR. DONALDSON: Yes, Mr. Chairman, Members of the Board.

CHAIRMAN JOHNSON: And do we have anybody here representing Diversified Stone Products?

MR. DONALDSON: Not to my knowledge.

CHAIRMAN JOHNSON: Okay. So if you are the only party, Mr. Donaldson, please proceed.

MR. DONALDSON: Thank you, Mr. Chairman.

The Division is here before the Board requesting an order terminating the notice of intention of Tony

[5]

1 Aguiar, doing business as Diversified Stone Products, and
2 requiring immediate reclamation of the Wonder 2 mine,
3 authorizing the Division to proceed to reclaim the site
4 if reclamation is not completed in a timely manner, and
5 authorizing the Division to file suit to recover the
6 costs of reclamation and associated costs.

7 This is a small mine operation, a rock quarry,
8 and we anticipate the matter to not take very long to
9 hear. But we have a couple of individuals who will be
10 testifying today. And we ask that they be sworn in at
11 this time -- Mr. Lynn Kunzler, from the Division, and
12 Mr. Michael Jackson, from the Bureau of Land Management.

13 CHAIRMAN JOHNSON: Can we do that now?

14 THE REPORTER: Will you both raise your right
15 hands, please?

16 You do solemnly swear the testimony you are
17 about to give will be the truth, the whole truth, and
18 nothing but the truth so help you God?

19 MR. KUNZLER: Yes.

20 MR. JACKSON: Yes.

21 MR. DONALDSON: We'll now proceed with some
22 testimony from Mr. Kunzler.

23 CHAIRMAN JOHNSON: Can you guys arrange the
24 microphone so it will be between the two of you. Thank
25 you.

[6]

1 DIRECT EXAMINATION

2 BY MR. DONALDSON:

3 MR. DONALDSON: Could you state your name and
4 position with the Division?5 MR. KUNZLER: I'm Lynn Kunzler. I'm currently
6 employed with the Division as a senior reclamation
7 specialist.8 MR. DONALDSON: And how long have you worked for
9 the Division as a reclamation specialist?10 MR. KUNZLER: I've been in the minerals program
11 for 15 1/2 years.12 MR. DONALDSON: Could you please describe the
13 Wonder 2 mining operation?14 MR. KUNZLER: The Wonder 2 mining operation was
15 a small mining operation disturbing approximately 1 3/4
16 acres of ground. The operator was after a banded
17 rhyolite material for decorative stone building stone
18 uses. It was mined using open-surface mining techniques,
19 using a track hoe excavator to break the rhyolite from
20 the deposit.21 MR. DONALDSON: Turning to Exhibit D, this is
22 the exhibit packet that you should have received this
23 morning. The first page of that exhibit packet, could
24 you just tell me what that is?

25 MR. KUNZLER: This was a illustration from GPS

[7]

1 data that I collected this fall from the site. The
2 southern portion of it is the access road going into the
3 site, making up approximately a quarter acre. The quarry
4 itself is about 1-1/2 acres in size.

5 MR. DONALDSON: Thank you. Is it your
6 understanding that -- to your knowledge, according to
7 your knowledge, the last year an annual report was filed
8 by Diversified Stone Products was 2005. Is that correct?

9 MR. KUNZLER: To my knowledge, that is correct.

10 MR. DONALDSON: And did the Division issue a
11 cessation order requiring reclamation in 2007?

12 MR. KUNZLER: Yes.

13 MR. DONALDSON: Now, turning to the other
14 exhibits, these are attached in the actual filing,
15 Exhibit A. Mr. Kunzler, can you tell me what Exhibit A
16 is?

17 MR. KUNZLER: Exhibit A is the original notice,
18 or plan of operations that was submitted to the Bureau of
19 Land Management, and subsequently copied to the Division.
20 We accepted this as the notice from Diversified Stone for
21 permitting the Wonder 2 mine.

22 MR. DONALDSON: And according to the exhibit,
23 who is the operator of the mine?

24 MR. KUNZLER: Diversified Stone.

25 MR. DONALDSON: And who is the current president

[8]

1 of Diversified Stone Products, according to your
2 knowledge?

3 MR. KUNZLER: That would be Tony Aguiar.

4 MR. DONALDSON: Did the operator post a
5 reclamation bond for the mine?

6 MR. KUNZLER: No. And at the time the notice
7 was submitted, neither the Division nor the BLM had
8 requirements for bonding small mining operations.
9 Subsequently, both the BLM and the Division currently
10 have requirements for bonding. And this operation has
11 not complied with either the state or the BLM in bonding
12 this site.

13 MR. DONALDSON: So to your knowledge, what is
14 the current status of the mining operation?

15 MR. KUNZLER: The current status is, it is
16 inactive. There has been some reclamation work done at
17 the site, but it has not been completed.

18 MR. DONALDSON: In Exhibit A, on the second page
19 under "Proposed Reclamation," what has the operator
20 indicated would occur with regard to reclamation of the
21 area?

22 MR. KUNZLER: That all areas affected by the
23 operation would be recontoured to blend into the
24 surrounding area.

25 MR. DONALDSON: And in your opinion have all

[9]

1 areas affected by the mining operation been recontoured
2 to put into the...

3 MR. KUNZLER: No.

4 MR. DONALDSON: Thank you. Have you visited the
5 mining site -- did you visit the mining site in November
6 of 2008.

7 MR. KUNZLER: Yes.

8 MR. DONALDSON: And who was present during your
9 visit?

10 MR. KUNZLER: I got to think on that one, to say
11 for sure.

12 MR. DONALDSON: I think...

13 MR. KUNZLER: We could have had Michael Jackson
14 from the BLM there, as well, at that time. I don't
15 recall if Tony was there on that one.

16 MR. DONALDSON: Okay. At the time of that visit
17 in 2008, what reclamation work had been completed?

18 MR. KUNZLER: There had been some re-grading
19 work done. And the access road going into the site had
20 been satisfactorily re-graded. The quarry itself had
21 not.

22 MR. DONALDSON: Now turning your attention to
23 Exhibit C in the filing. What is Exhibit C?

24 MR. KUNZLER: Exhibit C is a Notice of Agency
25 Action that was submitted to Tony Aguiar to withdraw his

[10]

1 permit and order immediate reclamation to be completed
2 within 90 days.

3 MR. DONALDSON: Does the letter also inform
4 Mr. Aguiar of the opportunity to request a hearing
5 appealing the Division's action.

6 MR. KUNZLER: Yes. It did spell out his
7 opportunity, or right, to request an appeal and hearing
8 on this matter. And it provided the instructions to file
9 for that appeal.

10 MR. DONALDSON: And did he request any appeal of
11 that action?

12 MR. KUNZLER: To my knowledge, no appeal was
13 ever requested.

14 MR. DONALDSON: And was the reclamation work
15 completed within 90 days as required by the letter?

16 MR. KUNZLER: No.

17 MR. DONALDSON: Have you communicated with
18 Mr. Aguiar since the letter marked Exhibit C was sent?
19 That was in 2008.

20 MR. KUNZLER: Yes. I've talked to him a couple
21 of times on the phone. There was hopes that he would
22 have done that reclamation work this last spring. But
23 due to various equipment breakdowns, not being to
24 mobilize equipment to this site, or other reasons given,
25 the work never did take place.

[11]

1 MR. DONALDSON: And when was the last time you
2 visited the site -- or the latest time?

3 MR. KUNZLER: I visited the site in August 25th,
4 I believe it was, of 2009.

5 MR. DONALDSON: And during that site visit, what
6 was the -- what did you find with regard to the
7 reclamation?

8 MR. KUNZLER: The reclamation work is still not
9 being completed. And it appeared that there had been no
10 work performed since the initial -- or the main work
11 was -- had been done in November of 2007.

12 MR. DONALDSON: In your opinion, what
13 reclamation work still needs to be done at the mine?

14 MR. KUNZLER: There is considerable amount of
15 waste dump material that needs to be regraded and blended
16 in to try to achieve proximal contours. This would also
17 involve reducing the high wall cut that was made.

18 MR. DONALDSON: And in your opinion, will the
19 requested Board action allow the remaining necessary
20 reclamation work to be completed in a timely manner?

21 MR. KUNZLER: Yes.

22 MR. DONALDSON: And if the Board does approve
23 the Division's request, in your opinion when will the
24 reclamation work be completed?

25 MR. KUNZLER: I would expect that the Division

[12]

1 would have contracts ready, that we could mobilize late
2 April, early May of 2010 to have that work finished at
3 that time.

4 MR. DONALDSON: Thank you. It's my
5 understanding, Mr. Kunzler, that you have prepared some
6 photographs of the site, both before reclamation and then
7 after reclamation, the reclamation work that has been
8 done so far. If you want to pull those up.

9 I'll just ask you to go through the slides and
10 explain to the Board what they are seeing. And if the
11 Board has any questions, feel free to ask Mr. Kunzler.

12 CHAIRMAN JOHNSON: Are these the same
13 photographs that are in Exhibit D?

14 MR. KUNZLER: Yes.

15 CHAIRMAN JOHNSON: Okay. Thank you.

16 BOARD MEMBER HAROUNY: I have a question.

17 CHAIRMAN JOHNSON: Go ahead.

18 BOARD MEMBER HAROUNY: Initially, this mine --
19 when this mine was approved, there's no criteria or
20 requirements for a bond. Is that what...

21 MR. KUNZLER: Yes, that is correct. There was
22 no requirement from the state to bond the site.

23 BOARD MEMBER HAROUNY: So they are grandfathered
24 under some older criteria, correct?

25 MR. KUNZLER: No. When our bonding rules took

[13]

1 effect, we allowed them a period of time to come into
2 compliance with the bonding rules. But that bonding
3 requirement was for all existing, as well as new, mining
4 operations.

5 BOARD MEMBER GILL: Did they come into
6 compliance? Do you want to check if they come into
7 compliance?

8 MR. KUNZLER: No, they never did post a bond.
9 That's one of the reasons why that cessation order was
10 issued is because they had not completed reclamation, nor
11 did they give us a bond to cover reclamation costs.

12 CHAIRMAN JOHNSON: Approximately when did
13 bonding requirements come into effect? Was it about two
14 years ago, is that correct?

15 MR. KUNZLER: Naturally, for the small mining
16 operations that were in existence, we required those to
17 be bonded by December of 2006.

18 CHAIRMAN JOHNSON: Okay. Thank you.

19 BOARD MEMBER GILL: I have one question. The
20 question is: Are there other small mining operations
21 still, then, unbonded?

22 MR. KUNZLER: I suspect there's still a few.
23 Some of them we're still working with, as far as getting
24 to either this point, or having reclamation or the bond
25 in place.

[14]

1 BOARD MEMBER PAYNE: I have a question, too.

2 CHAIRMAN JOHNSON: Go ahead.

3 BOARD MEMBER PAYNE: I notice on the Plan of
4 Operations that was submitted in 1996, that it says this
5 was an existing mine site. Is there disturbance at that
6 mine site that predated Diversified Stone's involvement,
7 and would you be seeking, basically, the costs for
8 reclaiming that stuff, if there is?

9 MR. KUNZLER: No. We're only looking at being
10 able to go in and reclaim the areas that Mr. Aguiar
11 re-affected of any old mining that may have been in the
12 area.

13 BOARD MEMBER PAYNE: So you're able to
14 distinguish between the two --

15 MR. KUNZLER: Yes.

16 BOARD MEMBER PAYNE: -- so you are not going to
17 ask Mr. Aguiar to pay for the preexisting...

18 MR. KUNZLER: Exactly.

19 BOARD MEMBER JENSEN: I have a question.

20 I notice in your petition, and maybe this goes
21 to counsel, that you are seeking against Mr. Aguiar dba
22 Diversified Stone Products. And yet I notice within the
23 body that there's a reference to Diversified Stone
24 Products, Inc.

25 My question is: How are you getting at

[15]

1 Mr. Aguiar, personally? Is it a dba, or is it a
2 corporation? And I guess the other -- if it's a
3 corporation, is the corporation still in good standing?

4 MR. DONALDSON: It is a corporation, Diversified
5 Stone Products, Inc., and Mr. Aguiar is the president of
6 the corporation, it's our understanding. But we are
7 not -- we don't know at this time whether the corporation
8 is in good standing.

9 BOARD MEMBER JENSEN: I guess it's really not
10 for this Board, but if you go forward and spend money and
11 then seek to recover it, you're going to have to deal
12 with the issue of whether you are stuck with a
13 corporation or whether you can pierce through the
14 corporate veil and get at Mr. Aguiar. So any relief that
15 this Board would give, then, would be as against
16 Diversified Stone Products. Is that --

17 MR. DONALDSON: That's correct.

18 BOARD MEMBER JENSEN: Okay. Thank you.

19 CHAIRMAN JOHNSON: Thank you.

20 BOARD MEMBER HAROUNY: Do you have an estimate
21 for the amount of money that's needed to reclaim, No. 1?
22 And No. 2, what was the amount of bond requested?

23 MR. KUNZLER: The amount of bond that was
24 requested for this that I -- was based on calculations
25 that the Bureau of Land Management had provided. And it

[16]

1 was in the neighborhood of \$25,000 for reclamation of
2 this site.

3 BOARD MEMBER HAROUNY: That's not a huge amount.

4 MR. KUNZLER: No, it's not a terribly large --
5 it is for just a couple of acres of reclamation, it's
6 substantial, but.

7 CHAIRMAN JOHNSON: Ms. Semborski, do you have a
8 question?

9 BOARD MEMBER SEMBORSKI: I do have a question,
10 thank you.

11 Who would do the reclamation work? Who would be
12 in charge of that process, and where would the funding
13 come from for that work?

14 MR. KUNZLER: To my understanding, the Division
15 does have some non-lapsing funds that we can use to hire
16 a third-party contractor. As far as which contractor
17 would do that, I can't answer that now. We would put
18 that out for bid.

19 BOARD MEMBER SEMBORSKI: But it would be done by
20 the Division.

21 MR. KUNZLER: By a third-party contractor. The
22 Division would oversee the work.

23 BOARD MEMBER SEMBORSKI: Okay. Thank you.

24 MR. KUNZLER: If I can proceed, then, with the
25 slides here.

[17]

1 CHAIRMAN JOHNSON: Yes.

2 MR. KUNZLER: Again, this is just the GPS map of
3 the area.

4 BOARD MEMBER GILL: And where is that in
5 general? What would be likely the closest community?

6 MR. KUNZLER: Closest community is probably
7 Joseph, Utah. This site is located about 20 miles south
8 of Richfield, Utah. It's on the alunite mining district,
9 north of Marysvale.

10 This area, right here, is the access road that
11 was reclaimed. The rest of this area, here, is the
12 quarry, and the dump is along this southwestern edge,
13 north being to the top of this particular drawing.

14 This is what the site looked like, looking to
15 the southeast of the site prior to any reclamation work.
16 Another one of the site looking to the northwest. This
17 is a high wall area, here. The pits and mining was being
18 conducted in this area. And then back here is where
19 topsoil was being stockpiled.

20 Okay. Again, here, this is a high wall area,
21 here. Pit floor. He did have a substantial berm along
22 the top of the waste dump area. Okay.

23 In August of 2007, there had been some work done
24 prior to my site visit. If you notice the berm across
25 the top of the high wall has been pulled back into the

[18]

1 pit floor. Again, this is that same time period. Most
2 of the holes, and that, were filled in at that time.

3 Again, you notice the high wall along here.
4 Topsoil stockpile still sitting there to the back.

5 Just another quick view of that.

6 This is a dump material, again down here, that
7 we had talked with -- when I say "we," both myself and
8 the BLM had requested and instructed Mr. Aguiar that this
9 material needed to be pulled back up and graded against
10 the high wall cut.

11 Another view of that waste dump, here. Waste
12 dump pretty much continued along the distance of the
13 quarry. This is looking at the north end of the waste
14 dump, through here.

15 In November, Diversified Stone did have a
16 separate contractor out here doing a little bit of work.
17 And the track hoe is starting to do the work on
18 reclaiming the access road at this time, even though at
19 the time the quarry itself had not been completely
20 regraded, as you'll see in some subsequent photos here.

21 Again, this is the access road. At this point,
22 they did put a substantial berm here between the access
23 road and the quarry. I want to pay particular attention
24 here. You can still see the compaction and traction in
25 this area here, from when the work was done in August.

[19]

1 There was not much work on the quarry floor done since
2 that August time frame.

3 April 29 of 2008 we conducted another site
4 visit. We have Michael Jackson and Wayne Wetzel, I
5 believe, from the BLM here. This is Tony Aguiar. We
6 discussed the type of work that still needed to be
7 finished to regrade this. And at that time Mr. Aguiar
8 admitted that the regrading work was not what we had
9 discussed with him prior to reclamation.

10 Again, just another view looking to the north
11 across the quarry floor, and the high wall is along here.
12 The top of the cut is just right where -- at the edge of
13 the vegetation there.

14 This is the regraded access road, in here. Both
15 the Division and the BLM felt that the regrading work was
16 satisfactory on the access road, although we still need
17 to have access to the site to finish the reclamation
18 still.

19 This is the berm, right here, that blocked the
20 access road going into the quarry. You can still notice
21 there is substantial amount of waste material that should
22 have been graded into the quarry.

23 Last half-dozen photos are of my inspection in
24 August of this year. This is at the quarry, looking back
25 along the access road, the grading portion from this area

[20]

1 to up here. Again, there has been a little bit of
2 settling, and most of the vegetation in here is
3 volunteer. This site was never seeded. Most of it is
4 halogeton. There are a few shadscale plants that we
5 would like to -- that would be good to have there. We
6 wouldn't want to redisturb those.

7 Again, a photo of the waste drop dump that still
8 needs to be pulled back and put into the quarry floor.

9 This is the north side of the dump. There were
10 a lot of vines put over the side of the dump, but it's
11 still in basically an angle of repose. And as you'll
12 notice the size of the vegetation here, the few shrubs
13 here, this end of the quarry dump never was regraded.

14 This is standing towards the northern end
15 looking back across the floor. The vegetation that you
16 see in here is all halogeton. Again, the high wall
17 slope, here. And the dump is going off to the right,
18 there.

19 This is taken from up along the side of the high
20 wall looking down again at the floor. You can see this
21 portion here never was regraded. The berm is still
22 there. This is our topsoil stockpile in that area. And
23 I have to say that with a grain of salt. It's not a high
24 quality soil material. It would be very marginal to use.

25 And final view, again, notice the high wall

[21]

1 cuts. And it's still relatively flat. In fact, there's
2 a pile of material, here, that's actually higher than
3 this area in here, still leaving somewhat of a depression
4 in there. And we felt that there's enough material in
5 the waste dump that it would cut it back to a line
6 somewhere in this area here. This material would fill in
7 this wedge and would nearly completely fill the high wall
8 at an acceptable angle for reclamation as well as
9 blending in with the natural contours in the area.

10 This is the final slide, here, taken across the
11 valley. This is the area that was not regraded, in this
12 area here. This is the high wall, back in here. And the
13 rest of this is a waste dump.

14 This portion, right here, is the road that was
15 regraded. And again, there was no seeding done on any of
16 the work that had been done, just a little bit of
17 regrading in this area from about here, coming across
18 here. And most of it, I believe, was the removal of that
19 berm along there, pulling it across the quarry floor.

20 That's my last slide.

21 BOARD MEMBER JENSEN: Can you go back to that
22 slide for one second?

23 MR. KUNZLER: This one?

24 BOARD MEMBER JENSEN: Yes. Mr. Payne asked
25 about the earlier site, and you said that you were able

[22]

1 to identify that. Where is that?

2 MR. KUNZLER: I think most of the area that had
3 been disturbed prior to Diversified Stone going in was
4 reaffected. There's a little bit, right in this area
5 here, that was disturbed. And this was probably the
6 access road going in at that time. And so this area,
7 here, is about all that's left on this area that was
8 redisturbed; and we would not be doing anything with
9 that.

10 BOARD MEMBER JENSEN: Okay.

11 BOARD MEMBER PAYNE: One other question: Does
12 Diversified Stone hold any other permits in this state?

13 MR. KUNZLER: At this time, no.

14 BOARD MEMBER PAYNE: Okay.

15 CHAIRMAN JOHNSON: Go ahead.

16 MR. DONALDSON: Members of the Board, this
17 concludes the State's presentation of evidence. We ask
18 that the Exhibits A through D be accepted into the
19 record. D is the slide presentation that you saw,
20 including the map. And A, B, and C are attached as
21 exhibits to the filing, the Division's filing.

22 CHAIRMAN JOHNSON: Mr. Donaldson, did you have
23 any testimony dealing with Exhibit B?

24 MR. DONALDSON: No. Exhibit B -- that's a good
25 point. Exhibit B is a letter from the Bureau of

[23]

1 Reclamation -- what's that? I'm sorry, I thought I heard
2 something -- just a letter from the Bureau of
3 Reclamation.

4 I think Mr. Jackson is going...

5 CHAIRMAN JOHNSON: Is it Bureau of Reclamation
6 or Bureau of Land Management?

7 MR. DONALDSON: I'm sorry. Bureau of Land
8 Management. Excuse me. BLM.

9 Mr. Jackson is going to testify as to the BLM's
10 position on this matter.

11 CHAIRMAN JOHNSON: Okay.

12 MR. DONALDSON: So --

13 CHAIRMAN JOHNSON: All right.

14 MR. DONALDSON: -- I think we'll turn the time
15 to him.

16 TESTIMONY OF MR. JACKSON

17 MR. JACKSON: I'm Michael Jackson. I'm a
18 geologist. I'm currently employed with the Utah State
19 Office of the Bureau of Land Management. Prior to 2007 I
20 worked for the Richfield field office of the BLM. I know
21 where this project is located. I was personally
22 responsible for this case from 1999 to the present. I've
23 continued to work with it, even though I work for the
24 state office at this time. Appreciate the opportunity to
25 appear before the Board.

[24]

1 The Agency -- or the Division asked me to
2 provide a supporting testimony, and I'll try to keep it
3 as brief, and more of a summary, rather than going into
4 extensive detail on the BLM record. I'll be glad to
5 answer any questions you have, as well.

6 Okay. BLM's record started in December 1994,
7 when a notice was filed by Diversified Stone Products
8 with the Bureau of Land Management, the Richfield field
9 office. Based on a map that was filed with the notice,
10 there was an arrow that showed an area where discarded
11 material would be placed north of the quarry along the
12 access road, approximately at the same topographic
13 contour as the quarry would be. The quarry was also
14 indicated on this map. This was not a large scale map or
15 a small area map. It was basically a 24,000, 7.5 minute
16 topo map, so it didn't have, you know, great detail.

17 For reclamation, at that time our notices
18 required that the operator make a reclamation statement.
19 And the statement was that all areas affected will be
20 recontoured to fit into the surrounding area. And I
21 added the italics for "fit." I guess that's
22 interpretation, but it indicated that he was going to
23 reclaim, and it would be recontoured, as much as it
24 could, into the preexisting topographic contour.

25 In the BLM acknowledgment letter for the notice,

[25]

1 we had several operating procedures that we were
2 requiring. And I captured a couple of those. One was
3 that, "Overburdened and reject material shall be
4 stockpiled up slope on the access road and separately
5 from the topsoil."

6 And then Operating Procedure 4 was, "Upon
7 completion of operations (except to the extent necessary
8 to preserve mineralization), overburden shall be returned
9 to the pit to recontour the surface to near natural
10 slope. Then the topsoil would be re-spread over this
11 fill material."

12 The part in the parenthesis about preserving
13 mineralization, that's a requirement out of our
14 regulations. It's probably more applicable to hard rock,
15 you know, exploration, where you may still have some
16 mineralized areas that you want to keep open as an
17 exposure.

18 This is a photo that was taken in 1999. It's
19 similar to the one that land -- or the Division had.
20 This is an earlier photo. In the black -- the black line
21 is more or less the outline of what we considered to be
22 the surface disturbance associated with this operation.
23 The quarry is outlined in the blue line. And basically
24 it is in this area, right here, is where the rock was
25 removed from.

[26]

1 The way I interpreted the original notice, the
2 waste rock material was going to go up here at the north
3 end, north of the quarry, more or less on topographic
4 contour. As the quarry developed, the material was cast
5 over the side and formed a waste rock dump. And the
6 green line is vaguely visible, is more or less the toe of
7 that dump.

8 And then below that, there were some scattered
9 larger boulders that rolled off the dump as the material
10 was dumped over the side. Essentially, what they did was
11 quarry the rock with a back hoe or track hoe and swiveled
12 around and dumped it over the edge as they worked the
13 material.

14 There was an access road that came into the site
15 prior to the notice being filed in 1994. You can see the
16 road through here. My belief is that that road was
17 probably part of the uranium exploration in the 70s.
18 This project is just north of what's called the "Central
19 Mining Area," which was where uranium was mined north of
20 Marysvale back in the 50s and 60s, and some work
21 continued into the 70s.

22 The road was basically a -- you know, a narrow
23 two track. It had vegetation growing in the center of
24 it. And, you know, someone had probably taken a dozer
25 and did a side cut along this hill. It's possible it

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1 could have been earlier and related to some of the
2 alunite mining that's been done in this area, as well.

3 BOARD MEMBER JENSEN: Mike, I have a question.
4 In the BLM file, is there any evidence of any notices
5 from the BLM that the waste rock dump area that was being
6 utilized was not in conformity with the initial
7 application and approval?

8 MR. JACKSON: There was no waste rock dump, to
9 my knowledge, in this area prior to the work being done
10 by Diversified Stone Product.

11 BOARD MEMBER JENSEN: Yeah. And my question
12 is -- and that's what the picture shows. And you've
13 talked on an earlier slide about Procedure No. 3 and it
14 being placed in the north, but it doesn't appear that
15 that occurred.

16 And my question is: Is there any evidence of
17 the BLM giving any kind of a notice that it wasn't being
18 complied with?

19 MR. JACKSON: I was not responsible for the file
20 prior to '99. I did have some limited involvement. I
21 inspected the site in 1997, prior to BLM having an
22 inspection with Tony Aguiar to address the concern that
23 the waste rock was being dumped over the side. There is
24 a photo that shows that the dump was there in 1997.
25 Unfortunately, there were not photos taken that were

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1 preoperational for Tony Aguiar's rock operation.

2 But I did go on-site in 1994 when the notice was
3 originally filed. And I have no recollection that there
4 was anything other than a relatively small access road
5 coming through the area where the project area is at this
6 time -- where the disturbance is. You can see there is
7 some older disturbance. There's this area, here, to the
8 north or northwest. It looks like, you know, someone had
9 made a dozer cut.

10 And my recollection is that this part of the
11 road, there was a side cut that was maybe three,
12 four feet high on the inside. And obviously, some of
13 that material would be have been cast over the side, but
14 I wouldn't say it extended more than, you know, a few
15 feet down the slope, you know. It was just typical road
16 construction for exploration -- go in with the dozer, cut
17 it, and the material rolls down the side.

18 BOARD MEMBER JENSEN: And so you did have -- you
19 were involved in it certainly in '99. Is that right?

20 MR. JACKSON: In '99, I took over responsibility
21 for BLM's administration of the site.

22 BOARD MEMBER JENSEN: So after you took over,
23 did you do anything relative to the notice?

24 MR. JACKSON: Yes, I did. Starting in 2000 and
25 2001, I -- BLM sent letters to Tony. Tony had been

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1 sending in annual updates saying he was going to continue
2 operations as is. And BLM, through my review of the
3 file, we decided we would not accept a notice that did
4 not more fully address what the operation was going to
5 be: You know, where's the quarry going to be; what's
6 going to be the configuration of the quarry; and how high
7 is the high wall cut going to be; how far into the slope
8 is he going to mine; and then where is he going to put
9 his material that he's going to be working to pull out
10 the decorative rock; and then the waste rock, where would
11 that be placed?

12 And as we've been through the slides, starting
13 in 2001, at that point we required -- was when our
14 regulations became in effect that we had to have a bond
15 for this operation. And we had letters that addressed,
16 that requirement, as well. So starting in '99, 2000, I,
17 personally, and BLM attempted to, you know, try to get a
18 better description of what the operation would be and get
19 it bonded to cover the disturbance.

20 Okay. As I just said, on January 20, 2001, we
21 -- BLM had new federal regulations that required a
22 financial guarantee for reclamation, and that financial
23 guarantee had to be posted with BLM by January 20, 2003.
24 So essentially there was a two-year window in which
25 operations that had started prior to 2001 would now be

[30]

1 required to post an adequate bond with BLM. BLM
2 attempted to get a bond, and we were unable to ever get a
3 satisfactory estimate or bond in place from the operator,
4 Diversified Stone.

5 So on November 7, 2003, BLM issued a decision
6 that a financial guarantee of \$24,900 was required within
7 60 days. The operator believed the estimate was high,
8 and he said he would provide another estimate to BLM for
9 us to review. But we never received another estimate.
10 In fact, I don't remember the exact dates, but in
11 January 2003, when the 60-day period expired -- it wasn't
12 exactly January 7th, because we take it from the date of
13 receipt -- Tony had called me and -- called my manager
14 and said, "I'll have an estimate to you on Monday. Will
15 you extend it to Monday?" And we still never received
16 another estimate from the operator.

17 So the next year, on June 21, 2004, since we did
18 not have a financial guarantee, by the effect of the
19 regulations the notice had expired, and Diversified Stone
20 was required to reclaim the site. And we gave him 60
21 days to complete that work.

22 Two years later, when we still did not have
23 reclamation, BLM issued a noncompliance order for the
24 failure to reclaim the site, and again required
25 reclamation within 60 days.

[31]

1 In November 2006 and April 2007, we met with the
2 operator. I think it was Tony Aguiar. I believe the
3 Division was there, represented by Lynn Kunzler and
4 myself; and we, at the site, discussed what was necessary
5 for reclamation to comply with the previous decision and
6 the noncompliance order.

7 This is an inspection photo on August 8, 2006.
8 You can again see that there's the waste rock dump on the
9 left, and the old quarry on the right, with the high wall
10 or quarry face on the right. This is the access road
11 that the operator used to get into his site. And you can
12 see that the dump extends down the slope. The slope is
13 about a 30-degree angle, if I remember correctly, so it's
14 a moderately steep slope. There's a berm of material
15 that's on the perimeter on the southeast -- or southwest
16 side of the quarry. This is basically looking northwest.

17 Okay. Through the previous decision that
18 reclamation was required, then the noncompliance order
19 and the inspections with the operator, BLM was requiring
20 that the quarry be reclaimed to the natural contour to
21 the extent feasible. This would require that the quarry
22 be backfilled to the height of the high wall cut, not
23 just simply fill in the pit floor. Rock material that
24 had been cast down the slope on the waste rock dump would
25 need to be pulled up from the slope. And the rock

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1 material from the dump, another stockpile should be used
2 to backfill and recontour the quarry -- hence, our
3 surface disturbance.

4 We addressed that, depending on the equipment he
5 had on site, you know, he may need to work in lifts where
6 he would have to move material from one level up to the
7 next level and then move it again. So we didn't
8 anticipate that it would just be bring an excavator out
9 and simply pull it up the slope.

10 We talked about the access road would need to be
11 recontoured. And at the inspection, I addressed that
12 while the large boulders -- if you can remember the slide
13 I showed first -- there were some large boulders that
14 were down below the toe of the dump -- that those could
15 remain in place.

16 And then finally, the available topsoil would be
17 respread and recontoured.

18 This is an inspection photo on August 28, 2007.
19 You'll notice that the berm is gone. Here's the high
20 wall, or the quarry face. This is the pit floor. And
21 here's the dump. The berm that was present would have
22 run along through here. It appears from the photo,
23 basically what he did was pull that berm material, and
24 maybe a little bit more material, back into the quarry
25 area to level out the quarry floor.

[33]

1 The operator did not contact BLM. But when I
2 called him after inspecting the site, he said they had
3 equipment problems and that they were planning to return
4 and complete reclamation when they could get the
5 equipment repaired.

6 On November 30, 2007, the operator had done some
7 additional reclamation work. You know, again, the quarry
8 face, the old pit floor, and here's the waste rock dump.
9 And it appears that this time there is a little bit of --
10 it's not real visible in the photo -- but it appeared
11 that with the equipment he had, he pulled out material
12 down to a certain level. And there's a little bit of a
13 line or declivity through there that kind of indicates
14 the extent of where he pulled additional material up.
15 This, again, is a view towards the northwest.

16 Between September 26, 2006, and July 23, BLM
17 documented 36 phone calls with the operator to determine
18 the operator's plans to comply with the noncompliance
19 order. The operator often stated that he intended -- had
20 intended dates to call when plans were finalized, or
21 dates when he planned to start the reclamation work. The
22 operator often postponed the reclamation for various
23 hardships. Some of these was that he was trying to sell
24 personal property to get the money to reclaim the site.
25 He was trying to sell partial ownership of Diversified

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1 Stone Products, but was awaiting finalization. And he
2 often said that a subcontractor would be present. But we
3 had no notification when there was a change in plans.

4 BLM completed, during this time, ten
5 inspections, and many of these were with the operator to
6 be assured that the operator understood the reclamation
7 that's required.

8 Just to summarize, reclamation -- in BLM's view,
9 reclamation has not been completed that meets the
10 standards of the federal regulations, and the operator is
11 in noncompliance. The noncompliance order issued in 2006
12 remains in effect, and that requires reclamation.

13 Limited recontouring of the surface disturbance has
14 leveled the quarry pit floor, but does not restore the
15 land to a natural condition to the extent feasible. Waste
16 rock piles have not been satisfactorily recontoured. The
17 quarry face is still present without adequate backfilling
18 to eliminate or to reduce the exposed cut.

19 The last contact between the operator and BLM
20 was on July 23, 2008, by phone, when he had made
21 arrangements with DOGM, or the Division of Oil, Gas and
22 Mining, to complete the reclamation in the fall of 2008.
23 The operator has not made any additional contacts with
24 BLM to follow up with reclamation and the noncompliance
25 order.

[35]

1 That ends my presentation.

2 CHAIRMAN JOHNSON: Does the Board have any
3 questions for Mr. Jackson?

4 BOARD MEMBER HAROUNY: I have a question.

5 When was the last time any material was moved by
6 operator from -- to be sold or -- when was the last date
7 of activity in this quarry?

8 MR. JACKSON: I believe the last time
9 Diversified Stone Products mined rock, you know, removed
10 in place rock from the ground, was prior to 1999 or 2000.
11 I met with Tony at about that date. I'd have to check
12 the file to get the exact date. But Tony said he was not
13 mining at that time, and he would only be reworking the
14 waste piles to recover any usable rock out of those
15 piles. So I don't think he has actually quarried rock
16 since about 1999. He has done some limited removal from
17 the stockpiles that are on site.

18 BOARD MEMBER HAROUNY: Was the reclamation
19 language specifically in the body of the permit or lease
20 that he signed on, or he had?

21 MR. JACKSON: When the notice was filed in 1994
22 by regulation, under the 3809 regs, the operator was
23 required to have a reclamation statement. And the BLM
24 notice form had a place where he could sign and make his
25 statement as to what he would do for reclamation. And

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1 that original notice, he has stated that he would
2 recontour the site to fit back into the natural terrain.

3 The subsequent updates for the next two or three
4 years had similar statements. And then, as I said, after
5 about 1990 -- I don't remember the exact date, but '99,
6 2000, when he gave us a new update for that year, I would
7 not accept that notice because I felt that he needed to
8 give us a new description of what his operations would be
9 to adequately cover, you know, what he would be creating
10 as part of his mining. And then in 2001, he was required
11 to give us a bond within two years.

12 BOARD MEMBER HAROUNY: So did he give you a new
13 notice when you required it?

14 MR. JACKSON: We never got a new notice. You
15 know, when he submitted the notice that he was going to
16 continue operations, we sent a letter back that addressed
17 what needed to be -- what he needed to address in his
18 notice. And we never got a new notice.

19 And as I said, at that time he said he wasn't
20 going to be quarrying anymore. He would simply rework
21 the waste piles and stockpiles that were already in
22 existence.

23 CHAIRMAN JOHNSON: Any other questions?

24 BOARD MEMBER JENSEN: I have a couple of
25 questions.

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1 BOARD MEMBER PAYNE: I do, too.

2 BOARD MEMBER JENSEN: In the Request for Agency
3 Action, the notice is dated '96. I'm just trying to
4 understand. You refer to it '94.

5 MR. JACKSON: Apparently -- excuse me.

6 BOARD MEMBER JENSEN: Go ahead.

7 MR. JACKSON: Apparently, BLM must have
8 received -- well, we received a notice in '94. At that
9 time, we were forwarding those to the Division. I can't
10 say what happened in that case. You know, we didn't
11 forward it, or somehow it -- anyway, somehow it didn't
12 make it to the Agency. But we did receive a notice in
13 1994.

14 We believe that the Division did receive the '94
15 notice, and the '96 was one of the updates.

16 BOARD MEMBER JENSEN: I have another question,
17 and I apologize for being probably what is naive. But
18 when you talked about the Division having some money to
19 undertake this work, my question is: How is it that the
20 Division has the responsibility and not the BLM? Seems
21 like the application is coming into the BLM; the BLM is
22 setting forth the requirements. And I'm just trying to
23 understand how it moves from one agency to another.

24 MR. KUNZLER: I think part of why the Division
25 has that there, and that responsibility, is under our

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1 mining rules and law, reclamation is required by the
2 Division, and the Act and Rules do allow the Division to
3 complete reclamation when we have an unwilling or unable
4 operator to do that, and recover costs through court.

5 BOARD MEMBER JENSEN: Is there a corresponding
6 at the federal level?

7 MR. KUNZLER: Yes.

8 MR. JACKSON: Yes.

9 BOARD MEMBER JENSEN: What I'm concerned about
10 is that we can get all done and spend the money and not
11 be able to collect it or recover it.

12 MR. JACKSON: BLM's next step in this case will
13 be that we will issue yet another decision that
14 reclamation is required within a certain time frame. And
15 in that decision we will state that if the reclamation is
16 not completed, that the BLM will reclaim the site at our
17 cost -- or the Government's cost -- and then bill the
18 operator and claimants of record to recover that cost.

19 BOARD MEMBER JENSEN: So is the chicken coming
20 first, or the egg?

21 MR. JACKSON: Well, I guess I don't know if I'm
22 speaking out of hand here.

23 MR. DONALDSON: Can I just say something? I
24 think the reason we're here before the Board is, in order
25 for the site to be reclaimed, Board action is required.

[39]

1 Without -- in other words, the Board needs to approve
2 reclamation of the site by the Division in order for that
3 to happen without the operators -- without the operator
4 doing it.

5 BOARD MEMBER PAYNE: Can I interject?

6 BOARD MEMBER JENSEN: Well, I understand that
7 from the state level. But it seems to me that we've kind
8 of got a juggling going back and forth here, about who is
9 on first. I'm just posing the question. I'm certainly
10 not trying to decide that or give you direction.

11 CHAIRMAN JOHNSON: Mr. Payne.

12 BOARD MEMBER PAYNE: I agree with Mr. Jensen.
13 It seems the BLM has initiated a process here. Their
14 February 2009 letter specifically says they will take
15 further action to reclaim the site.

16 I'm not convinced, Mr. McDonald (sic), that
17 there's an order needed from this Board for the BLM to
18 take that action. So I'm with Mr. Jensen. It seems like
19 there's competing agencies -- or competing initiatives
20 here. And I guess I would prefer to see that the BLM
21 initiative play out before the state get involved. And I
22 guess I'd like to get a response as to why that wouldn't
23 be sufficient.

24 MR. DONALDSON: Just a moment.

25 MR. ALDER: Mr. Chairman.

[40]

1 CHAIRMAN JOHNSON: Mr. Alder.

2 MR. ALDER: Perhaps, Mr. Baker is familiar with
3 the -- he's the manager over the mineral section. He
4 could explain that better.

5 MR. KUNZLER: Several months ago we had a phone
6 conference with BLM officials, both in Richfield and the
7 state office, in order for -- the BLM was looking at
8 using what they call "force account funds," which may or
9 may not be available at this time. And the one thing
10 that we looked at and discussed, and why we're looking at
11 this Board action and being able to use the state funds
12 to do it is, we would provide those funds to the BLM so
13 that they could get the work done in a timely manner and
14 not have to wait for a budgeting session or two on the
15 federal level before they would have the funds available
16 to proceed with the work themselves.

17 BOARD MEMBER JENSEN: Without -- and is that,
18 then, without recovery, or would there be --

19 MR. KUNZLER: We would be reimbursed eventually.

20 BOARD MEMBER PAYNE: Would the state be
21 reimbursed by the federal government if there was a
22 failure to recover all the costs? I guess where I
23 struggle is, if it's BLM property, the benefit of
24 reclamation is going to go to the BLM.

25 MR. KUNZLER: Right. But it's also having the

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1 site reclaimed now, versus in two or three years,
2 potentially, while we're waiting for BLM funds to be
3 available to do that work. It's going back to getting it
4 done in a timely manner. We've been several years trying
5 to get the site reclaimed.

6 BOARD MEMBER PAYNE: Just to step back. Is
7 there an MOU or other similar device between the state
8 and the BLM that addresses what happens in these kind of
9 situations where you're both interested in getting the
10 reclamation accomplished?

11 MR. KUNZLER: Not that I'm aware of.

12 BOARD MEMBER PAYNE: Paul?

13 MR. BAKER: No, there's not.

14 CHAIRMAN JOHNSON: Mr. Jackson, did the BLM
15 collect royalties from Diversified Stone Products?

16 MR. JACKSON: This mining was done under the
17 mining laws, and there is no royalty --

18 CHAIRMAN JOHNSON: Thank you.

19 MR. JACKSON: -- under the mining law, in the
20 rules.

21 CHAIRMAN JOHNSON: Any other questions?

22 Mr. Donaldson, I don't think we finalized the
23 admission of your exhibits. I'm wondering what you want
24 to do with the slides that Mr. Jackson testified to.

25 MR. DONALDSON: We would like to have those,

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1 also, admitted as --

2 CHAIRMAN JOHNSON: As Exhibit E?

3 MR. DONALDSON: -- as Exhibit E.

4 CHAIRMAN JOHNSON: Okay. Does the Board have
5 any objections to any of the exhibits?

6 Okay. Then Exhibits A through E will be
7 admitted.

8 Mr. Donaldson do you want to summarize? Or are
9 we at that point?

10 MR. DONALDSON: I want to summarize.

11 We believe the evidence and testimony that has
12 been given today, and submitted, supports the Division's
13 requested action from the Board. And we would just
14 request that the Board issue the order as requested by
15 the Division. And we'd be happy to answer any other
16 questions, if necessary.

17 CHAIRMAN JOHNSON: Are there other questions
18 from the Board?

19 Okay. Let me ask one more time: Is Tony Aguiar
20 present this morning, or is there anyone present that's
21 authorized to speak for Mr. Aguiar or Diversified Stone
22 Products?

23 Seeing no one, is there anyone else present who
24 would like to address the Board regarding this matter?

25 BOARD MEMBER HAROUNY: Mr. Chairman, one last

[43]

1 question.

2 Is this the first time that the State has
3 requested -- or trying to reclaim a site on BLM property
4 for and on behalf of the BLM and have a situation where
5 they could be reimbursed, or has this occurred before?

6 MR. KUNZLER: I believe this is the first one
7 that there has been no reclamation surety available for
8 either the BLM or the State to use in reclaiming a site.

9 BOARD MEMBER HAROUNY: And this is the first
10 time for a relationship between the State and the BLM to
11 reclaim this site with state money and be reimbursed by
12 the BLM, correct?

13 MR. KUNZLER: To my knowledge, yes.

14 CHAIRMAN JOHNSON: Go ahead.

15 BOARD MEMBER PAYNE: I don't think there is a
16 clear indication that the BLM was going to reimburse the
17 State.

18 BOARD MEMBER HAROUNY: No, there isn't.

19 BOARD MEMBER PAYNE: Just so the record is
20 clear.

21 CHAIRMAN JOHNSON: Is that correct, Mr. Jackson?

22 MR. JACKSON: I guess I'm not really
23 knowledgeable what that process would be. I guess the
24 way I view it is, under our regulations and under the
25 state rules, both entities have responsibilities for

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1 managing mining and reclamation. And BLM's hope is that
2 the two agencies could work together to try to rectify
3 this problem. And how the money would be worked out, I
4 don't know at this time.

5 CHAIRMAN JOHNSON: Mr. Donaldson.

6 MR. DONALDSON: Mr. Baker has told me that
7 the -- it's his understanding that the rules provide that
8 the Division -- and also an order from the Board -- would
9 allow the Division to go after the operator for the
10 reclamation expenses and -- not go after the BLM for
11 reimbursement, but go after the operator.

12 BOARD MEMBER PAYNE: Isn't it correct that the
13 BLM already has the authority, right now, to go after the
14 operator? They've indicated so much in their letter of
15 2009 that they could perform the reclamation themselves
16 and seek reimbursement. That's in their letter. So it
17 seems like that authority is already -- already exists.

18 MR. JACKSON: The BLM does have the authority to
19 seek reclamation and to reclaim it and bill it. It's not
20 spelled out specifically in the 3809 regs, but that is
21 the guidance that we're being given on how to deal with
22 this situation.

23 CHAIRMAN JOHNSON: Anything else? Okay. Thank
24 you. We will take a short break to deliberate, and we'll
25 return shortly. Thank you.

[45]

1 (The Board deliberated from 10:41 a.m. to 11:17 a.m.)

2 CHAIRMAN JOHNSON: Okay. We're going to
3 proceed. Let's go back on the record.

4 By unanimous vote, the Board has made the
5 following decision: Mr. McDonald (sic), we're going to
6 break your request, which was three parts, into four.

7 Before I proceed, though, I would just like,
8 since we are on the record, I would like to confirm. We
9 heard no testimony this morning referring to any
10 immediate hazard or threat to public safety in this
11 matter. Is that correct?

12 MR. DONALDSON: Yes.

13 CHAIRMAN JOHNSON: That's a yes? Both
14 Mr. Kunzler and Mr. Jackson say "yes." Okay.

15 The unanimous decision of the Board, then, is
16 that we will grant an order confirming the Division's
17 withdrawal of the Notice of Intention for the Wonder 2
18 Mine and terminate all rights thereunder.

19 No. 2, the Order requires that Diversified Stone
20 Products immediately commence reclamation of the mine,
21 pursuant to written notice to Diversified Stone Products
22 by the Division defining the area to be -- that was
23 disturbed by the operator so that there's no confusion
24 with any pre-disturbed areas. Understand that?

25 MR. DONALDSON: (Mr. Donaldson nodded his head

[46]

1 in the affirmative.)

2 CHAIRMAN JOHNSON: And No. 3 and No. 4 are going
3 to be contingent upon an item. So let me go through 3
4 and 4.

5 No. 3. Providing that if Diversified Stone
6 Products shall fail to timely proceed with the
7 reclamation and complete the reclamation work as required
8 by the applicable regulations, that the Division and/or
9 the BLM may proceed to complete the reclamation work and
10 recover its costs against Diversified Stone Products.

11 No. 4. The Order authorizes the Division to file
12 suit and prosecute such further civil actions, if
13 necessary, to recover all costs associated with the
14 reclamation of the Wonder 2 mine, together with all costs
15 and attorney fees associated therewith.

16 No. 3 and No. 4, however, are contingent upon a
17 signed agreement between the Division and the BLM that in
18 the absence of recovery of reclamation costs from the
19 mine operator, BLM will reimburse the state for any and
20 all reclamation costs expended by the state.

21 Are there any questions on that?

22 MR. DONALDSON: No questions.

23 CHAIRMAN JOHNSON: Mr. Donaldson, will you
24 prepare the Order?

25 MR. DONALDSON: Yes.

[47]

1 CHAIRMAN JOHNSON: Thank you very much. We
2 appreciate the effort that went into this.

3 MR. DONALDSON: Thank you.

4 (The hearing concluded at 11:21 a.m.)
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